

**MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM**

December 7, 2006

**COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA**

Liz Christiansen, sitting as Chair in the absence of Susan Voss, called the Iowa UST Board meeting to order at 10:10 A.M. A quorum was present. Roll call was taken with the following Board members present:

Cathy Rottinghaus (via telephone)
Delia Meier
Liz Christiansen (for Jeffrey Vonk), Chair
Stephen Larson (for Michael Fitzgerald)
Doug Beech
Jim Holcomb (arrived at 10:20 A.M.)
Jeff Robinson

Also present were:

David Steward, Attorney General's Office
Scott Scheidel, Program Administrator
Lacey Skalicky, Program Administrator's Office
James Gastineau, Program Administrator's Office
Elaine Douskey, Iowa Department of Natural Resources
Tim Hall, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the October 26, 2006 meeting were reviewed. Mr. Larson moved to approve the minutes, Mr. Beech seconded the motion, and by a vote of 5-0, the minutes were approved.

CLOSED SESSION

Ms. Christiansen noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. Therefore no closed session convened.

PUBLIC COMMENT

Ms. Christiansen requested any comments from the public present. There were no comments at this time.

BOARD ISSUES

A. LPT Proposal from PMMIC

Mr. Scheidel reviewed with the Board that they had requested adjustments to the language within the documents regarding the Board's loss portfolio transfer of a limited number of shared LUST sites to Petroleum Marketers Management Insurance Company (PMMIC). He noted that Mr. Steward had added language to the client agreements stating that the State Guaranty Fund does not apply to claimants transferring from the Fund to PMMIC. Additionally, Mr. Steward had added to the agreement between the Board and PMMIC language that would provide the Board with annual reporting from PMMIC with regard to the amount of money expended on each transferred claim/site since the transfer.

Mr. Scheidel explained that the master agreement between the Board and PMMIC would not be executed until all of the claimants signed their individual claimant agreements and waivers releasing the Board and accepting the transfer to PMMIC. All claimants who executed the individual waivers would be included in the master agreement.

Mr. Beech moved to approve the use of the agreements presented by the Administrator and Assistant Attorney General. Mr. Larson seconded the motion, and the agreements were approved by a vote of 5-0.

Mr. Holcomb arrived at 10:20 A.M.

B. RBCA Recalibration Update

Mr. Scheidel discussed the status of the recalibration of RBCA discussions. He reviewed with the Board that LaDon Jones of Digital Control, Inc. had developed the original RBCA model, and he had recently compiled a list of 30 sites to study the accuracy of the RBCA models for each. Mr. Scheidel stated that another meeting was held in November, during which Mr. Jones was directed to reevaluate the 30 sites previously reviewed. The next meeting was scheduled for December 14, 2006, and the re-evaluation from Mr. Jones was due December 18, 2006. Ms. Christiansen inquired about a timeline for the entire process, however Mr. Scheidel replied that no timeline was set, and the work group was still gathering information at this point. He explained that some simple solutions may be agreed upon, however many tough decisions lay ahead.

For example, Mr. Scheidel proposed that the group focus on a model that would project how a new release would affect the soil and groundwater – and accept the fact that old releases should be treated differently, because they have already spread to some extent. And old releases could

be addressed as exceptions rather than the rule. Also, he stated that Mr. Jones had proposed using statistical relevance as opposed to technical modeling in the projections.

Elaine Douskey clarified that only 25 of the 30 sites reviewed by Mr. Jones had useful data to review. Also, she stated those 25 sites included gasoline sites, and she said that diesel sites would have to be reviewed differently, so the DNR was looking for records on diesel sites to provide to Mr. Jones for review. Ms. Douskey next stated that the new release model, proposed by Mr. Scheidel, was addressed within the current guidance which allowed for a separate risk classification if a stable plume could be substantiated; therefore she explained that one could propose a different risk using the actual plume, however those historic risk classifications were needed to recalibrate the new RBCA model.

C. NFA/Low Risk Site Risk Transfer Program

Mr. Scheidel presented the Board with a memo and a letter from Jeffrey Hanneman of Aon Environmental regarding an insurance product that was created for the State of Wisconsin for sites that had obtained No Action Required or Low Risk status, but were later discovered to have latent contamination from the old release that required remediation. The memo explained that the Wisconsin State Insurance Program allowed participants to buy in to the State's master environmental insurance program at pre-negotiated premiums as long as the participant met the established underwriting criteria. The premium charged to site owners was based on selected criteria such as the size, location and historical use of the site.

The Board had previously directed the Administrator to come to a consensus with the Department of Natural Resources regarding the investigation of the benefits of such a risk transfer method. Based on the meeting between Mr. Scheidel, Tim Hall from DNR, and Mr. Hanneman from Aon, the Administrator and the DNR had agreed that the process of exploring such a risk transfer method would be beneficial, even if it did not result in the use of the product itself. The purpose of exploring such a risk transfer method was to alleviate the fear of losing funding for site remediation once the site was closed. This type of a product would provide the site owner, as well as the DNR, with assurance that a funding mechanism would be available for the site in case of the unexpected.

Mr. Hall noted that the DNR would have access to funding to clean up sites that had already been declared No Further Action (NFA), as many site owners were hesitant to apply for the NFA certificate right away for fear of losing funding. This way those sites may be closed and taken off the books, while assurance would remain to assist the DNR with unexpected cleanup in the future. He stated that the DNR and the Administrator had agreed to explore the idea and to develop how they would like the mechanism to work for Iowa sites, including parameters for evaluating sites and guidelines for the program.

Mr. Scheidel noted to the Board that the leaking underground storage tank (LUST) sites in Iowa could be broken down into roughly three sets, including 1) sites closed prior to January 31, 1997 as No Action Required, which have no additional funding available to them; 2) sites closed after January 31, 1997 or that will close in the future, for which funding up to \$100,000.00 is available for additional remediation, and 3) sites that are not eligible for UST Program funding, including

self-insured sites or commercially-insured sites, for which no additional funding is available subsequent to closure of their insurance claims. He explained that a risk transfer mechanism could provide some level of funding to each and all of those sets of sites. He also stated the mechanism could provide some form of third party liability assurance based on the confirmed closure of a site under RBCA rules, as the UST Fund rules did not currently provide for third party liability claims 99% of the time. Mr. Hall and Mr. Scheidel confirmed that no funding would be required to pay for the investigation process they were to undertake. A consensus among Board members indicated that they would like the Administrator and the DNR to move forward with their investigation of a site risk transfer program. Mr. Larson inquired whether the interested or affected parties would be identified if and when their investigation produced any legislative initiative. Mr. Scheidel agreed that the parties would be identified and their positions would be stated, however he expected the process of developing a program for Iowa would take more than a year. Ms. Christiansen inquired about Mr. Scheidel's meeting with an environmental expert with experience with this type of approach. Mr. Scheidel stated that he met with an environmental expert from Aon, who had been involved in the development of the Wisconsin program of a similar nature. Mr. Scheidel said that several DNR employees had met with Aon's environmental expert to discuss the way a similar concept worked in Wisconsin.

Mr. Hall confirmed, stating that the DNR had been interested in the concept from a brownfield perspective to redevelop those areas, as well as, LUST sites.

D. DNR Update

Elaine Douskey from the Department of Natural Resources (DNR) discussed the current activities of DNR staff. She handed out some newsletters from the Tank Section of the DNR.

Ms. Douskey explained that November had been filled with public relations functions for the Department, and she had attended the Groundwater Association meeting in Iowa City to discuss a site in Traer regarding the various groundwater issues surrounding the site. In addition, the Environmental Professionals of Iowa had held their Fall Conference, and a number of DNR staff had presented. Also, the Environmental Protection Agency (EPA) Region X invited Iowa DNR staff to discuss with their inspectors in training the compatibility of ethanol products with underground storage tanks, as the Iowa DNR was ahead of most states on the issue.

Ms. Douskey had been in Washington D.C. the week prior to meet with representatives from other State programs regarding the federal Energy Policy Act and UST provisions and how to get State programs to implement them.

Next, Ms. Douskey reported that the new UST database was in the testing phase, therefore DNR staff was in the process of dual data entry to analyze how the test database stacked up to the existing system. Also, she reported that the DNR had already bid out the work to complete the third party inspector management piece of the system, and the EPC had approved the DNR's choice of Barker Lemar to develop that piece, based on proposals received. The development and testing of that portion of the system was tentatively scheduled for implementation by April 1, 2007.

Regarding the UST Section of the DNR, Ms. Douskey stated that the newsletter had some articles directed to inspectors who wanted to become part of the compliance inspection program of the DNR. DNR staff had assembled an inspection guide for inspectors who attended the training program. Additionally, the DNR website had a specific web location devoted to compliance inspection information. The first training session was held November 14, 2006, and 8 inspectors were certified through the training that day.

Ms. Douskey explained that during the meeting in Washington D.C., the State Program representatives were given the opportunity to comment regarding some provisions of the federal Energy Policy Act. The Iowa DNR had some interest in the inspection provision of the Act, and they were given 30 days to submit comments. She stated specifically that the draft of the Act contained language regarding site owners becoming certified to perform compliance inspections on their own sites. She offered to incorporate any comments from Board members if she received them in time before the deadline.

Lastly, Ms. Douskey reported the DNR had closed 19 sites since October 1, 2006, which began their federal fiscal year of reporting to the EPA.

Mr. Larson inquired about a section of the DNR newsletter that referred to provisions affecting the Iowa UST Program. One of the items listed was “prohibition for EPA to distribute funds currently given to support...” He inquired whether this provision was language included in the Energy Act, and if so did it refer to funds diverted in the past or funds that may be diverted in the future. Mr. Scheidel responded that the language was specifically targeted for State programs that provided insurance for future releases, and he explained that Iowa was one of very few states that no longer provided UST insurance to sites. However the language did relay that going forward, the EPA would not contribute federal funds to State UST programs, if those States diverted money from their State UST programs to fund other State programs.

Mr. Beech requested that Mr. Scheidel submit comments on behalf of the Board to Ms. Douskey regarding the compliance inspection language in the Energy Policy Act, and Mr. Scheidel agreed to do so. With regard to site owners completing their own compliance inspections, Mr. Scheidel offered to express their opinion that site owners could be allowed to complete their own compliance inspections as long as certain controls were maintained (for example, DNR field office staff on site to observe the inspection and reporting). Ms. Douskey stated that certain states’ representatives felt very strongly in one direction or another, and the Maine representative had suggested the EPA allow each state to decide the conflict of interest question independently. However, she explained that focus groups for each provision had been meeting and gathering comments for over a year to date, and the resulting draft language in their guidance documents included the question of conflict of interest with regard to site owners doing their own site inspections. Therefore, this final comment period from States would be crucial for communicating their opinions on the issue. Jeff Hove from Petroleum Marketers and Convenience Stores of Iowa (PMCI) commented that given their particular cooperation with the EPA and the DNR throughout the discussions regarding the provision, they would feel slighted if the provision didn’t incorporate what he felt had been agreed upon based on that cooperation.

E. Discussion of Upcoming Legislative Session

Mr. Scheidel stated that the first item to complete during the upcoming legislative session was to transfer the responsibilities of the Installer/Inspector Program from the Board in Iowa Code 455G to the DNR in their section of the Iowa Code (455B). Additionally, the associated Iowa Administrative Code regulations would be entered under the DNR's regulatory rules. Mr. Scheidel explained that Dave Wornson of the DNR had been developing more specific language with regard to the DNR's authority over the Installer/ Inspector Program, as the Board's rules were quite broad.

Next, Mr. Scheidel explained that the Board's statute had contained duties to certify groundwater professionals, as well. However that responsibility had been transferred to DNR by 28E agreement since inception of the groundwater professional certification program. Therefore the formality of transferring the duties of the program from the Board to the DNR would be a matter of filing the rescission and filing the new language to the DNR statute.

Also, Mr. Scheidel noted the resulting changes to the State government from the recent election. Ms. Christiansen reported that the DNR had been directed to put together a transition notebook for a potential change in directorship, but she had heard nothing of a change to date. Mr. Scheidel discussed the new committee chairs for each of the relevant committees within the legislature, and he stated he would be communicating with each chair and ranking member regarding the goals and the mission of the UST Fund Board. As requested by the Board, Mr. Scheidel would also extend an invitation to each to attend a meeting with Board members.

Mr. Larson asked if the revenue stream from a possible gas tax increase might provide a funding mechanism for the Board. Mr. Scheidel agreed that it was possible that the increase might mean more funding for the Board or for the DNR for operational funding, which would benefit the Board. Mr. Steward also explained to the Board that Governor Elect Culver had previously worked in the Environmental/UST Division of the Attorney General's Office and therefore had a unique perspective regarding the UST Program compared to former governors.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services\$ 112,830.33
Consulting Services – December 2006 (\$62,750.00)
Claims Processing Services – December 2006 (\$50,080.33)
2. Attorney General's Office\$8,694.81
Services provided for Underground Storage Tank Program
October 2006 billing
3. Attorney General's Office\$8,694.98
Services provided for Underground Storage Tank Program
November 2006 billing

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Larson and a second by Mr. Holcomb, the billings were approved by a vote of 6-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the October activity report and Opt In Report were in the Board packets. Also, carried-in were the October financial reports, which were distributed to Board members.

ATTORNEY GENERAL'S REPORT

Mr. Steward stated that he had nothing to report to the Board at this time.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8602119 – Kum & Go LC, Pella

This site was classified as high risk for soil vapor. Free product had recently reappeared. Soil gas levels had gone down below Tier I with the last sample taken; however the soil source was currently beneath the water table preventing a confirmation sample. A post-RBCA conference was held October 19, 2006. DNR required that the proposed excavation by the groundwater professional move forward unless the groundwater levels were to go down and the site could be cleared with soil gas by March 2007. Previous authority to \$75,000 had been granted, of which \$64,313.58 was expended to date. Additional authority to \$135,000 was requested for a site monitoring report (SMR), possible free product recovery (FPR) and implementation of an excavation.

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Ms. Rottinghaus. Approved 6-0.

2. Site Registration 8607907 – Sapp Bros. Petroleum, Council Bluffs

This was a second Board report for this site which was classified high risk. An excavation was performed using shorings for the site building and large canopy footings. Free product had not reappeared; however soil and groundwater levels remained significantly above the soil and groundwater site specific target levels (SSTLs). A sparge/vacuum system had been installed in the backfill. Previous authority to \$375,000 had been granted, of which \$377,683.58 was expended to date. Additional authority to \$525,000 was requested for a site monitoring report (SMR), free product recovery (FPR) and continued implementation of the corrective action design report (CADR).

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 6-0.

3. Site Registration 8607932 – Quint Cities Petroleum LLC, Bettendorf

This was a low risk, non-granular bedrock site with diesel free product. Under the RBCA rules, twelve monitoring wells need to be sampled annually, and with free product in multiple wells, the site may require long term monitoring. Previous authority to \$75,000 had been granted, of which \$86,855.67 was expended to date. Additional authority to \$150,000 was requested for a SMR and FPR.

A motion to approve the claim authority was submitted by Mr. Larson and seconded by Mr. Beech. Approved 6-0.

4. Site Registration 7910549 – Litho Craft Printing, Des Moines

This site was high risk for soil vapor, soil leaching to groundwater vapor and groundwater vapor. Actual groundwater levels were below SSTLs for the last two sampling events, but they had not achieved steady and declining status. The soil was immediately adjacent to, if not under, the on-site building so that excavation could not be done. The parties at the post-RBCA conference agreed to chemical oxidation. Previous authority to \$75,000 had been granted, of which \$16,675.00 was expended to date. Additional authority to \$130,000 was requested for a SMR and implementation of chemical oxidation.

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Mr. Larson. Approved 6-0.

5. Site Registration 8607227 – Midwest Farmers Coop, Hospers

This site was classified low risk but had significant quantities of free product. The DNR required a more aggressive free product removal. A soil vapor extraction (SVE) trailer unit was recommended by the consultant. Previous authority to \$75,000 had been granted, of which \$71,875.54 was expended to date. Additional authority to \$160,000 was requested for a SMR and FPR.

A motion to approve the claim authority was submitted by Mr. Beech and seconded by Mr. Holcomb. Approved 6-0.

CONTRACTS ENTERED INTO SINCE THE OCTOBER 26, 2006 BOARD MEETING

The Board had entered into a contract addendum with Barker Lemar Engineering Consultants to extend the community remediation project in Bentley (Neola), Iowa for one year.

OTHER ISSUES

Mr. Scheidel stated he had attended another meeting of the Renewable Fuels Infrastructure Board in November. He explained that the Renewable Fuels Board had not requested any consultation from Iowa UST Fund Board members to date. Although the activities of the Renewable Fuels Infrastructure Board did not involve the UST Fund Board directly, money from

the UST Fund was diverted to provide funding for the Renewable Fuels Infrastructure Board. Mr. Scheidel stated he would continue to attend and he would notify Board members when meetings were scheduled in the future, if they want to attend as well. He explained that recent Infrastructure Board discussions had focused on what rules to include with regard to reimbursement including retroactivity. (i.e. Some site owners might want reimbursement for money expended on upgrades to their systems prior to the existence of the Program.)

Mr. Scheidel stated that the 2007 Legislative Session would begin on Monday, January 8, 2007. Also the next meeting of the Iowa UST Fund Board would be held on Fridays during Session, beginning Friday, January 26, 2007 at 10 AM. Mr. Larson explained that he would not be in attendance at the January meeting of the Board.

CORRESPONDENCE AND ATTACHMENTS

Ms. Christiansen asked if there was any further business, and there being none, Mr. Beech moved to adjourn, and Ms. Rottinghaus seconded the motion. By a vote of 6-0, the Board adjourned at 11:17 A.M.

Respectfully Submitted,

A handwritten signature in black ink, reading "Scott M. Scheidel". The signature is written in a cursive, flowing style.

Scott M. Scheidel
Administrator